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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES,)
)
PLAINTIFF) Criminal Action
)
-VS-) No. 10-10233-NG
)
JOHNNY WATKINS,) May 24, 2011
)
) 2:18 p.m.
DEFENDANT)

SENTENCING HEARING

BEFORE THE HONORABLE NANCY GERTNER

UNITED STATES DISTRICT COURT
JOHN J. MOAKLEY U.S. COURTHOUSE
1 COURTHOUSE WAY
BOSTON, MA 02210

VALERIE A. O'HARA
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UNITED STATES DISTRICT COURT
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1 A P P E A R A N C E S:

2 FOR THE UNITED STATES:

3 United States Attorney's Office, by KENNETH G. SHINE,
4 ASSISTANT UNITED STATES ATTORNEY, 1 Courthouse Way,
 Suite 9200, Boston, Massachusetts 02110;

5 FOR THE DEFENDANT:

6 Federal Defender's Office, by CATHERINE K. BYRNE,
7 ATTORNEY, 51 Sleeper Street, Boston, Massachusetts 02210.

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: You can be seated.

THE CLERK: This is Criminal Matter 10-10233,
United States vs. Johnny Watkins. Will counsel please
identify themselves for the record.

MR. SHINE: Your Honor, good afternoon,
Kenneth Shine. I appear on behalf of the United States
Government.

MS. BYRNE: Your Honor, Katherine Byrne
representing Johnny Watkins.

THE COURT: Mr. Watkins, would you please stand.
(Defendant was sworn)

THE COURT: Mr. Watkins, have you read the
pre-sentence report?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. Are there any changes you want
to make other than those your lawyer has already made?

THE DEFENDANT: No, ma'am.

THE COURT: Okay. You can be seated. Mr. Shine,
have you had an opportunity to see the video?

MR. SHINE: I did, your Honor, I received it
yesterday, and I had a chance to look at it, and I received
the packet this morning, 11:00, sentencing memorandum, which
I have had a chance to.

1 THE COURT: You have had a chance to?

2 MR. SHINE: Of course, I have. I did not have
3 lunch, I made sure I read it.

4 THE COURT: Me, too. Your recommendation is?

5 MR. SHINE: Well, it's a tough one, your Honor,
6 and I'm struggling with this recommendation. Mr. Watkins is
7 63, 64 years old. He has what I would suggest would be one
8 of those records that you step back in your career and just
9 say, whoa, I mean, clearly he has had four, this would be
10 his fourth federal case.

11 He's been convicted numerous times: Bank robbery;
12 mail theft; strong arm robberies; armed robbery in '66;
13 armed robbery again; federal mail theft, '72; armed bank
14 robbery, '73; federal bank robbery while he was on parole on
15 the '73 one in '78; he paroled, he was sent back because he
16 violated because of a strong arm robbery. I want to be
17 optimistic for you, I really do. I want to say that I think
18 that maybe now he gets it, I just don't know.

19 For the last 30 years, Mr. Watkins has been in
20 custody off and on for various different cases in this state
21 and federal cases and throughout. This was another bank
22 robbery. It was not in the realm of the bank robberies that
23 we see the most egregious matter, he walked in, he
24 approached the teller, he demanded money, he received \$863.
25 It wasn't a lot of money, I admit to that. Of course

1 because that's all there was in the drawer, if it was
2 \$10,000 in the drawer, he would have received \$10,000, and
3 he left the bank.

4 THE COURT: What about the fact that he hasn't
5 committed any crimes between '93 and 2010?

6 MR. SHINE: I do, I gave him credit for that, I
7 give him credit. You took a chance on him, I wouldn't have,
8 but you did, and I defer to your wisdom and judgment, that
9 since October of last year he has been out on release when
10 our office absolutely, we were not interested in releasing
11 him.

12 There's two aspects, there's many aspects of the
13 sentencing. One aspect we have to consider is some sort of
14 punitive aspect. He has done these offenses, he's gone to
15 jail, he said he's sorry, he goes back, and he does it again
16 and again and again. At what point do we say enough is
17 enough? At 64 years old, he's out robbing banks again.
18 Now, clearly he was having some issues at that time, his
19 sobriety, and I watched the video, and I've listened to some
20 of these people I'm sure that are in court today were some
21 of the people on the video saying that, you know, he's got
22 some expectation, and I really think, you know, you look in
23 the direction people are heading, I just don't know what to
24 recommend.

25 There are tellers who were at this bank who had to

1 interact with Mr. Watkins. That's not fair to them. My mom
2 goes to this bank sometimes, that's not fair to her, that
3 they have to interact with somebody. Mr. Watkins left,
4 there could have been more incidents that could have
5 happened. There's got to be a general deterrence. He's
6 starting to turn his life around. I was very sympathetic to
7 his wife's concerns, which was obvious in that video, but
8 there's got to be some punitive aspect to this, there's got
9 to be something that says to society, you know, a
10 sixth-month penalty, which is like a misdemeanor is not
11 enough.

12 Now, with that in mind, the advisory guidelines
13 are decent, 37 months I believe the low end, and I have
14 every right to stand here and say that that's not
15 appropriate, I have every right to say to you that this
16 gentleman's record clearly understates his criminal history
17 and his criminal livelihood. I won't do that.

18 My recommendation, your Honor, is this: I've
19 asked the Court to impose a nonguideline sentence of 30
20 months' incarceration. It would be followed by three years
21 of supervised release. Mr. Watkins is not in a position to
22 pay any type of fine, the mandatory \$100 special assessment
23 and restitution, and I believe it's in the amount of \$830 --

24 THE COURT: \$983 is what I have, is that right?

25 MR. SHINE: Yes, your Honor, I apologize. I think

1 the 30 months is a substantial sentence. It's a lengthy
2 sentence for him. I know it will impact other people
3 including Mr. Watkins family, and I'm sorry for that, but
4 they're not the ones that has been committing these crimes,
5 Mr. Watkins has, and I believe that number is a decent
6 number or at some substantial portion of that incarceration.
7 Thank you, your Honor, very much.

8 THE COURT: Thank you, Mr. Shine. Ms. Byrne?

9 MS. BYRNE: Yes, your Honor.

10 THE COURT: How do you address the punitive, that
11 there has to be some punishment here?

12 MS. BYRNE: Right. I respect that, and I
13 understand that, your Honor, but I do think that in this
14 case that six months is a significant period of time, and I
15 can tell you that the six months that Mr. Watkins spent in
16 custody on this case was probably the most difficult period
17 of time that he's ever spent in custody because his wife was
18 ill, he was unable to attend, to help her and attend to her
19 needs, which is something that he's basically been by her
20 side since 1989, and he couldn't help her, and he knew she
21 needed it.

22 They are of very limited means. She wasn't able
23 to make her way even to visit her during the whole time he
24 was there. She couldn't see him. They couldn't see each
25 other. They communicated by letters, and so that was a

1 really difficult time.

2 THE COURT: Is there someone to care for her if
3 he's in prison?

4 MS. BYRNE: She does have a son, however, he has
5 issues of his own in his own life and is not the person that
6 takes care of her and takes her to her medical appointments
7 and to go to the doctor with her and talk to the doctor and
8 understand what her medical condition is and things like
9 that, so I would say, you know, in the worst case scenario,
10 I'm sure that her son would come through her if he can.
11 Unfortunately he's been in jail some of the time. I don't
12 think that he is the most reliable person for her, and
13 Johnny Watkins has been the one who's been kind of
14 interacting with the doctors and explains what's going on
15 with her.

16 THE COURT: I saw that during the video
17 Ms. Watkins says that she forgets, he's the one who
18 remembers what to ask the doctor.

19 MS. BYRNE: Right. Today, actually, we were just
20 talking before we came in to see you, and I was telling
21 them, you know, what I was going to say to your Honor and
22 what was in the sentencing memo, and I said to her, well,
23 I'm going to tell the Judge that you struggle with cancer
24 and with kidney disease, and she said, "I don't have kidney
25 disease." And I said, "Well, yes, I think you do have

1 kidney disease," and he said, "Yes, you have kidney
2 disease," and it's all over her medical record that she has
3 significant renal failure along with severe depressive
4 disorder, and so I think that in terms of her medication and
5 in terms of understanding what's going on with the doctor,
6 she doesn't always get as good a grasp of what's happening
7 as her husband does, and he really helps her in that way as
8 well.

9 THE COURT: Who is in court today?

10 MS. BYRNE: In court today, your Honor, we have,
11 well, Gloria is sitting in the middle with the black leather
12 jacket on, and next to Gloria are Al and Larry and Paul, and
13 they are.

14 THE COURT: AA?

15 MS. BYRNE: Recovery AA supporters.

16 THE COURT: One of you was in the video?

17 MS. BYRNE: That's actually Larry, and he was not
18 able to be here today. Larry is Mr. Watkins' sponsor, and
19 actually I was just telling Mr. Watkins he really could be
20 an advertiser for AA. He's a big supporter.

21 THE COURT: I saw that.

22 MS. BYRNE: Actually Christine Consoli, I don't
23 know if you know Christine or Elisa Hutton, they're actually
24 in the Federal Defender's Office, and they actually made the
25 sentencing video, so they're here.

1 THE COURT: Anyone from the bank here, Mr. Shine?

2 MR. SHINE: No, your Honor, I advised them to
3 come. They asked me to express their concerns obviously,
4 and I just before Ms. Byrne ends, I misspoke, and I need to
5 correct that when I made my recommendation, I originally
6 asked for 30 months, and I'm asking for 25 months. I
7 apologize to the Court, I miscalculated, my recommendation
8 should have been 25 months. I'm not changing because
9 Ms. Byrne is so convincing, although I'm sure she is. My
10 number was 25 months, that's what I wanted to give you, so I
11 apologize.

12 THE COURT: Go on. Do you want to play the video?
13 I've seen it. Do you want to take the time to play it?

14 MS. BYRNE: It's up to you, your Honor. If you
15 have seen it, I don't feel the need to play it again. It's
16 mostly because I wanted you to see it, of course. I really
17 don't need to go on. I know you've read my sentencing
18 memorandum. The primary arguments are that Mr. Watkins is
19 the primary caretaker of his wife, that she will truly
20 suffer, I believe, if he is not there to help her. I think
21 that her --

22 THE COURT: There's a period from '93 to 2007 when
23 Mr. Watkins maintained sobriety.

24 MS. BYRNE: Right.

25 THE COURT: Then in 2007 he lost his job and had

1 to begin to care. That was when his wife was first
2 diagnosed with cancer?

3 MS. BYRNE: Right, around that time.

4 THE COURT: Why should we believe that the
5 stresses of taking care of his wife won't or heaven forbid
6 something else happened, why should we believe that that
7 won't set him off again?

8 MS. BYRNE: Right. I think that's a reasonable
9 question, and I think that he probably should address you on
10 that when he does have his chance to speak to you as well,
11 but I think that he really found his way through the AA
12 fellowship.

13 What happened was he stopped going, and he did
14 have a series of things that happened. It wasn't just that
15 his wife became ill with cancer, it was he lost his job and
16 then soon after that they had a fire, they lost everything.
17 Their house basically burnt down, they lost everything, and
18 they had to start over, and so it was a lot of things.

19 That's not an excuse, your Honor, I mean, that's
20 not a good excuse for going out and robbing a bank, but he
21 certainly wouldn't have done it if he weren't using drugs or
22 alcohol at the time, and because everything you see about
23 him is that he's a very moral person, he's a very kind
24 person. He's the one that goes over to the newcomers in AA
25 and gives them hope and support.

1 People love this man, and the things he's done in
2 his life, the kinds of work he does, he's a very generous
3 person, he's just a different person when he's using alcohol
4 and drugs, so I guess the thing is my real argument, your
5 Honor, is that to send him to interrupt with -- no one can
6 say for sure that he's never going to slip again and he's
7 not going to commit another crime.

8 I can't tell you that for sure obviously, but what
9 I can tell you is that sending him to prison and
10 interrupting the program that he has himself in now is not
11 going to be the best thing for society and for Mr. Watkins
12 because what he has now is the best hope that he will not
13 ever revert to the use of drugs or alcohol and commit any
14 more crimes because he's on a good path, and he intends to
15 stay on that path not because you make him do that, but
16 because that's what he wants to do.

17 He did that for 17 years when he wasn't on parole,
18 he did that because that's the life he really wants to lead,
19 and he wants to be there for his wife. The worst thing that
20 ever happened was that six months that he was away from her
21 and he was afraid he was going to lose her.

22 We don't know what her prognosis is at this point,
23 but he hopes to be there for her and hopes to lead a
24 productive life for the rest of his life, your Honor, and if
25 you have any other questions, I could address those or you

1 could hear from Mr. Watkins.

2 THE COURT: Mr. Watkins, I'd like to hear from
3 you. I'd like you to answer the question about if over the
4 next few years the situation with your wife deteriorates, if
5 it gets harder, what are the chances, nobody can give me
6 assurances, that you won't go back to drinking?

7 THE DEFENDANT: Your Honor, I'd like to say in the
8 program, you know they said, you know, if a person continued
9 to go to meetings, there's no chance at all that they
10 relapse, and that's what happened to me back in 2007, you
11 know, I got a little complacent, and I got away from the
12 meetings, but that's something that I would never, never do
13 again, and I'm very, very grateful that you believed in me
14 enough to give me the opportunity to be with my wife during
15 this major operation she just had about three months ago.

16 I will forever be grateful to you for that, you
17 know, for just believing in me enough to trust me enough to
18 give me an opportunity to do that. You know, I just can't,
19 I'll always be in your debt, but to me, you know, as far as
20 whether I will ever relapse again, nobody can never say
21 never, but I do know if I continue to do what I'm doing and
22 what I used to do, you know, when I got the 17 years or more
23 of staying clean was going to meetings, and like I said, I
24 got a little complacent, and I kind of got away from the
25 meetings, and once that happened, you know, I made a mistake

1 that I see, you know, where I made a mistake at, and once I
2 got in my head, I made a big mistake, but I never intend to
3 put anything in my body again to clog my mind up to make me
4 make a mistake like that again.

5 Like Ms. Byrne just said, when I was confined in
6 Wyatt Detention Center in Rhode Island, I felt like I was
7 going insane because I really love my wife and I was really
8 worried about her.

9 THE COURT: Do you in fact talk too much? She
10 said on the video that you talk too much?

11 THE DEFENDANT: Okay. Well, I just thank you for
12 everything, and I thank my lawyer, you know, I'm just
13 grateful that people believe in me, and no matter what the
14 decision, I'm glad that people believe in me again.

15 THE COURT: Thank you. Let me take a few minutes.

16 THE CLERK: All rise.

17 (A recess was taken.)

18 THE CLERK: All rise.

19 THE COURT: You can be seated. First let me ask a
20 question about pretrial. There was a problem on May 21st
21 which was just this past Saturday.

22 PRETRIAL OFFICER: That's correct, Judge. He was
23 scheduled out for an AA commitment from 6:00 to 8 p.m. He
24 ended up leaving early and getting home late.

25 THE COURT: Do you think it was anything at all?

1 THE DEFENDANT: That the AA commitment is a good
2 distance from his house and he is relying upon others for
3 rides.

4 THE COURT: Bank robbery is in one sense the most
5 difficult crime to sentence for because it's on the one hand
6 a very, very serious offense. People get really -- tellers
7 are put in danger, people are really frightened, and we also
8 fear, we all fear walking into a bank and having that happen
9 when we're there. By the same token, in my experience it's
10 not infrequent that the bank robbers, the defendants, are
11 people with monumental addictions, and so you have on the
12 one hand a crime whose cause, you know, you know the cause
13 of it and you know how to deal with it, and, on the other
14 hand, a very serious crime.

15 I appreciate the government's recommendation. I
16 appreciate the thought that went into it. I appreciate the
17 fact that the government is recommending a variance, and I
18 generally appreciate the time that Mr. Shine puts into all
19 of this.

20 I have to figure out how to say the next sentence.
21 I want to say that you are one of the U.S. attorneys that I
22 very much listen to, but that implies that there are others
23 that I do not, and I don't want to exactly say that, but
24 it's true that I know that care and thought and concern goes
25 into all of your recommendations, but I can't think of any

1 reason why Mr. Watkins should be returned to jail. I can't
2 think of any reason.

3 As I said, this is a crime for which we know the
4 cause. This is you drink, you do crime. I was enormously
5 impressed in the line in the video in which you say that how
6 horrified you were at your behavior not just because of you
7 committed another crime but because it put at risk your
8 relationship with your wife at a time that she needed you
9 most and because, as you said, you become a less than
10 dignified person, you lose your dignity when you drink, and
11 I found that an enormously moving thing. It's not just what
12 happens to you with others, but it's also that you become a
13 less than dignified person.

14 I don't think that anything other than time served
15 is necessary to accomplish the purposes of sentencing. You
16 will not recidivate so long as the addiction is under
17 control. We know -- this is not a prediction. We know that
18 that happens. For 20 years the addiction was under control.
19 This very bad record was undone, so public safety we know we
20 can deal with as long as your addiction, as long as your
21 alcohol is dealt with.

22 Will you be deterred from doing this kind of thing
23 again? Yes, because you understand you get in trouble again
24 and you lose your access to your wife. All the things that
25 you're doing now will go out the window if you get in

1 trouble again, and punishment, I appreciate the need for
2 punishment. I very much appreciate the need for punishment,
3 but here the need for punishment is actually inconsistent
4 with all the other purposes of sentencing. They collide.
5 Punishment commands one set of responses, but just about
6 every other purpose demands a different set of responses. I
7 think I have a way of at least requesting the punishment
8 concerns to a degree.

9 There is no question that the guideline
10 computation is correct, which is a base offense level of 19,
11 and is it a criminal history of 2? What's the criminal
12 history?

13 PROBATION OFFICER: Yes, your Honor.

14 THE COURT: Which led to 33 to 41 months. I
15 believe that a departure in fact is warranted from that,
16 would be warranted pre-Booker, a departure based on
17 extraordinary family circumstances, and the extraordinary
18 family circumstances is outlined in the memo and in the
19 video which has to do with Mr. Watkins' relationship with
20 his wife.

21 The relationship is very touching. Mr. Watkins
22 desperately wants to care for his wife. His relationship
23 seems to be essential to her getting by and getting whatever
24 kind of treatment that she needs. There's always a question
25 about whether the law on extraordinary family circumstances

1 after the Booker decision is the law that predated Booker or
2 the law afterwards.

3 It seems to me what we should be asking is not
4 just how this helps a third party but also the extent to
5 which Mr. Watkins' concern about his wife will keep him
6 under control so that family circumstances here bears on the
7 purposes of sentencing this individual as well as being
8 important for another human being, namely Mrs. Watkins.

9 I also believe that the concept of extraordinary
10 rehabilitation, which we used pre-Booker, also applies here
11 to justify this. Mr. Watkins is doing fine now. He has
12 support, he has a regime here, he has people who are caring
13 for him. Putting him in jail and disrupting all of that
14 with all the consequences of that it seems to me is
15 inconsistent with his rehabilitation.

16 So, Mr. Watkins, would you please stand. I'm
17 going to sentence you to time served, which is from 6-14-10
18 to 7-23-10 when you were detained in state custody for a
19 related offense and 7-23-10 to 12-14-10 when you were
20 detained in federal custody. That's the time already served
21 is the time that you will be sentenced to. Supervised
22 release for three years. No fine. Restitution in the
23 amount of \$983 and a special assessment of \$100.

24 On supervised release, you are, as I said, you're
25 supposed to make restitution in the amount of \$983. The

1 restitution is to begin immediately and shall be made
2 according to the requirements of probation. Restitution
3 shall be made to the Sovereign Bank. You're to tell the
4 U.S. attorneys of any change of mailing or residence
5 address. You're not to commit another federal, state or
6 local crime.

7 You can't make this argument again, you understand
8 that. You're to refrain from any unlawful use of a
9 controlled substance, submit to a drug test within 15 days
10 of today and at least two periodic drug tests thereafter.
11 You're to submit to the collection of a DNA sample, comply
12 with the standard conditions. You're prohibited from
13 possessing a firearm or other dangerous weapon. You're to
14 pay, as I said, the balance of the restitution. You're
15 prohibited from incurring new credit charges without
16 probation's permission, provide probation with requested
17 financial information. You're not to consume any alcoholic
18 beverage.

19 You're to participate in programs for substance
20 abuse counseling directed by probation which may include
21 testing. You're to participate in a mental health treatment
22 program as directed by probation. Probation will be careful
23 to make sure that whatever they recommend can be coordinated
24 with the AA obligations so that there are not too many
25 requirements being imposed on you. Whatever they do will be

1 consistent with your AA requirements as well as taking care
2 of your wife.

3 I'm also going to require community service, 45
4 hours over the three years of your supervised release. The
5 community service could be satisfied by your being a
6 counselor at AA in the way that you have been. In one sense
7 the story that you tell to others is a story about how close
8 you came to ruining your life and not being there for your
9 wife when she most needed you, so it would be community
10 service for 45 hours over three years.

11 I said a special assessment of \$100. I don't
12 think this is an easy sentence, but I think it's a fair one.
13 You have a right to appeal, and your lawyer will let you
14 know what that consists of. Do I need to address anything
15 else?

16 MR. SHINE: You do, your Honor. Two points, one,
17 there is a forfeiture allegation which you have to state in
18 open court. There were some items of clothing, things of
19 that sort that were seized, so I'd seek forfeiture as the
20 indictment would so allege.

21 THE COURT: Forfeiture, okay. Do you have that in
22 writing?

23 MR. SHINE: I do. It's part of the indictment
24 there's a forfeiture allegation.

25 THE COURT: Okay.

1 MR. SHINE: The only other thing, and I'll push my
2 luck, 45 hours of community service I think is commendable.
3 I'd like it double. I'm not happy with it at all, but I'm
4 thinking to myself an average 12-step program maybe if he
5 would just be responsible for following the class through,
6 45, he could do that in nine weeks. It's nothing, but you
7 have to follow a class through would be a sponsor for 90
8 hours or 100 hours of community service work.

9 THE COURT: Does that seem reasonable to you?

10 PROBATION OFFICER: Yes, your Honor, if there's
11 some problem with that, the probation officer would approach
12 your Honor for some modification.

13 THE COURT: We'll make that 90 hours. I
14 appreciate that, and I take that and you're not waiving any
15 of your other substantial objections to this sentence, I
16 understand.

17 MR. SHINE: Thank you, your Honor.

18 PROBATION OFFICER: Your Honor, we would just ask
19 with respect to the substance abuse and the mental health
20 counseling that Mr. Watkins be required to contribute to the
21 payments if available or the third-party payment
22 availability as well.

23 THE COURT: I forgot to say that. Whatever
24 probation recommends in terms of drug counseling or mental
25 health treatment you may be required to contribute if you

1 have the ability to contribute or have third-party payors
2 pay that amount. The forfeiture is in the indictment. Do
3 you need a separate order for that, Mr. Shine, or can I just
4 adopt the forfeiture allegations in the indictment?

5 MR. SHINE: You could adopt the forfeiture
6 allegations. If something is necessary, our office will
7 bring it down, but this is what they've asked me to present.
8 Apparently under the new regs., you have to specifically
9 stay on the record for the forfeiture allegation.

10 THE COURT: Does this have to be part of the
11 J & C, typically it is?

12 MR. SHINE: It is. If there's a specific thing
13 that's necessary, I will have that prepared and brought
14 down, but this should suffice.

15 THE COURT: All right. Mr. Watkins, you have a
16 right to appeal, and as I said, your lawyer will let you
17 know what that consists of. I wish you lots of luck.

18 THE DEFENDANT: Thank you, your Honor.

19 MR. SHINE: Your Honor, thank you.

20 MS. BYRNE: Thank you, your Honor.

21 THE CLERK: All rise.

22 (Whereupon, the hearing was suspended at
23 3:02 p.m.)
24
25

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS)
CITY OF BOSTON)

I, Valerie A. O'Hara, Registered Professional
Reporter, do hereby certify that the foregoing transcript
was recorded by me stenographically at the time and place
aforesaid in No. 10-10233-NG, United States vs.
Johnny Watkins and thereafter by me reduced to typewriting
and is a true and accurate record of the proceedings.

/S/ VALERIE A. O'HARA

VALERIE A. O'HARA

REGISTERED PROFESSIONAL REPORTER

DATED JUNE 2, 2011
